



Federal Communications Commission
Washington, D.C. 20554

JAN 28 1998

97-192

EX PARTE OR DATE FILED

The Honorable Henry J. Hyde
U. S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515-6216

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JAN 30 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Congressman Hyde:

Thank you for your letter dated December 23, 1997, on behalf of your constituent, Mayor Gayle Smolinski of the Village of Roselle, Illinois, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services. Your constituent's letter refers to three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comments on a Petition for Further Notice of Proposed Rule Making filed by the National Association for Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comments on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter and your constituent's letter, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

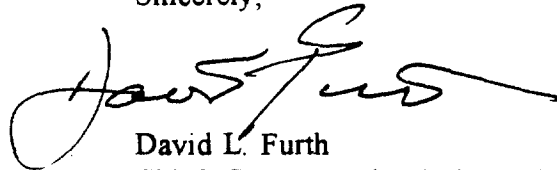
The Honorable Henry J. Hyde

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Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Furth", with a stylized flourish extending to the right.

David L. Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

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ONE HUNDRED FIFTH CONGRESS

Congress of the United States

House of Representatives

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December 23, 1997

Honorable William Kennard
 Chairman
 Federal Communications Commission
 1919 M Street, N.W.
 Washington, D.C. 20554

Dear Chairman Kennard:

I am writing with respect to the attached correspondence from a constituent of mine, The Honorable Gayle Smolinski, the mayor of the Village of Roselle, Illinois.

Mayor Smolinski raises a number of issues with respect to the Commission's policies on the siting of towers for various antennas. I would appreciate your giving me a report on the specific matters raised by Mayor Smolinski's letter so that I may respond to her.

I appreciate your attention to these matters. I look forward to hearing from you.

Sincerely,

Henry J. Hyde

HENRY J. HYDE
 Chairman

HJH/jg/es
 Enclosure



31 South Prospect Street

Roselle, Illinois 60172-2097

Telephone (630) 980-2000
FAX: (630) 980-8558

October 24, 1997

Representative Henry Hyde
50 E. Oak Street, Suite 200
Addison, IL 60101

RECEIVED

NOV 06 1997

Dear Representative Hyde:

COMMITTEE OF THE JUDICIARY

I am writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio, and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and ask it to terminate these efforts which violate the intent of Congress, the Constitution, and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC saying that it can second guess what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

Cellular Towers - Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

Radio/TV Towers: The FCC's proposed rule on radio and TV towers is just as bad: It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning, or other). Any permit request is automatically deemed granted if the municipality doesn't act in this time frame, even if the application is incomplete or clearly violates local law. Furthermore, the

Gayle A. Smolinski
Mayor

Linda J. McDermott
Village Clerk

Grow Together With Us

FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment, or aesthetics. Even safety requirements could be overridden by the FCC, and all appeals of zoning and permit denials would go to the FCC, not to the local courts.

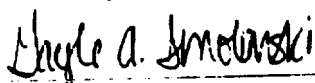
This proposal is astounding when broadcast towers are some of the tallest structures known to man - over 2,000 feet tall. The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. However, The Wall Street Journal and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise.

There will be a "Dear Colleague" letter prepared to the FCC from members of Congress. Please consider signing your name to back this cause. In addition, I respectfully request that you oppose any effort by Congress to grant the FCC the power to preempt local zoning authority.

Thank you for your time and consideration.

Sincerely,



Gayle A. Smolinski
Mayor

cc:	Senator John McCain	Senator Conrad Burns
	Senator Kay Bailey Hutchison	Senator Slade Gorton
	Senator Dianne Feinstein	Representative Tom Bliley
	Representative W.J. Tauzin	Representative Edward J. Markey
	Representative John D. Dingell	Representative Bob Goodlatte
	Representative James Moran	Representative Bart Stupak
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	Mr. Kevin McCarty	Ms. Cheryl Maynard